

# POMERANTZ LLP

Matthew L. Tuccillo

Partner

December 28, 2017

**VIA ECF – MAIN MDL DOCKET (WITH ATTACHMENTS)**

**VIA ECF – CASE DOCKETS (WITHOUT ATTACHMENTS)**

Honorable Keith P. Ellison  
United States District Judge  
Southern District of Texas  
Bob Casey Federal Courthouse  
515 Rusk Avenue, Third Floor, Room 3716  
Houston, TX 77002

Re: In re BP p.l.c. Sec. Litig., MDL 2185 Individual Actions

Dear Judge Ellison:

My firm is on the Individual Action Plaintiffs' Steering Committee (the "Steering Committee") in MDL 2815 and serves as the sole Court-appointed Liaison with Defendants and the Court, pursuant to ¶13 of the Court's Order on Pretrial Coordination and Leadership of MDL 2185 Individual Actions, dated December 11, 2013 (Dkt. No. 721) (the "Leadership Order"). In those capacities, pursuant to Leadership Order ¶¶14-15, I respectfully submit this letter, on behalf of the Steering Committee, with approval from Defendants' counsel, to provide the Court with an update and a proposal regarding global case management and discovery in the Individual Actions.

## Confidentiality Orders

Both sides anticipate pursuing discovery in the Individual Actions in earnest in the New Year. As a prelude, both sides evaluated the status of confidentiality orders in the various Individual Actions and discovered that in certain of those actions the "standard" confidentiality order that has been previously entered in many Individual Actions so as to protect information designated as "Confidential" or "Highly Confidential" by a producing party has not yet been submitted. Those cases are the *HESTA*, *IBM*, *Louisiana*, *Universities*, *Merseyside*, *Bank of America*, *Washington*, *Deka*, *Deutsche Asset*, *Helaba*, *GIC*, *Illinois*, *DiNapoli (State of New York)*, and *Pension Reserves* actions. The parties to those actions therefore respectfully request that the Court enter the agreed-upon proposed orders for those actions submitted herewith.

The parties to all Individual Actions have also agreed to a heightened level of protection for information that will be designated by a producing party as "Highly Confidential – Trading Data." The parties therefore respectfully request that the Court enter the proposed Supplemental Agreed Order

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Protecting Confidentiality, submitted herewith, that serves as a supplement to the “standard” confidentiality orders and protects that trading data in all actions.

## Scope of Discovery Responses

During a lengthy meet-and-confer process, including periodic updates provided to and input received from other affected firms, BP’s counsel, another Steering Committee firm, and I negotiated the scope of responses that will be made to the initial discovery requests served by the parties. Specifically:

- The negotiated outcomes pertaining to the Individual Action Plaintiffs’ First Interrogatories and the Individual Action Plaintiffs’ First Requests for Production of Documents, both served March 24, 2016, and the Individual Action Plaintiffs’ motion to Compel Discovery Response, filed August 8, 2016, all pursued by a majority of Individual Action Plaintiffs (and constituting the only discovery served by any Plaintiff within the Individual Actions), are set forth in a letter agreement, executed by the undersigned, dated March 21, 2017. All Plaintiffs who served discovery within the Individual Actions and/or filed the motion to compel authorized and signed off on these outcomes.

- The negotiated outcomes pertaining to the Defendants’ First Interrogatories and First Request for Production of Documents, served on all Individual Action Plaintiffs on May 27, 2016, are set forth in a letter agreement, executed by the undersigned, dated December 28, 2017 (the “December 28, 2017 Letter Agreement”). All Individual Action Plaintiffs have authorized and signed off on these outcomes.

## Global Case Management

During a lengthy meet-and-confer process, including periodic updates provided to and input received from other affected firms, BP’s counsel, another Steering Committee firm, and I also discussed and negotiated how to efficiently and effectively move the Individual Actions through discovery and summary judgment. Those efforts resulted in the proposed Scheduling/Docket Control Order submitted herewith. Its milestones are virtually identical to those set forth in similar such orders previously entered in certain Tranche 1 and 2 cases. However, the attached version adds a process by which, following an initial production of responsive materials by Plaintiffs per the December 28, 2017 Letter Agreement, sixteen representative Plaintiffs would be selected – eight selected by Defendants, followed by eight selected by the Steering Committee. These sixteen representative Plaintiffs then would engage in more extensive discovery (including as regards pertinent third parties such as outside investment managers), the scope and extent of which will be separately negotiated in the future, and would proceed through summary judgment. The Steering Committee and Defendants believe that such a framework is appropriate to ensure the efficient, timely advancement of the Individual Actions. All Individual Action Plaintiffs have authorized and signed off on these outcomes.

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## Request for Status Conference

As a result of the extensive meet and confer process described above, all the proposals set forth herein and in the exhibits appended hereto now have unanimous signoff by all counsel to the Individual Actions. If the Court wishes to discuss this letter or any of the proposals set forth herein or in the exhibits hereto, the parties respectfully request that the Court docket a telephonic status conference on or after January 22, 2017 to do so.

Respectfully,



Matthew L. Tuccillo

cc: Marc De Leeuw (Sullivan & Cromwell LLP) via ECF  
All Counsel via ECF